



## Supreme Court Holds States May Hear Securities Fraud Class Actions Under The 1933 Act

*Cyan, Inc. v. Beaver County Employees Retirement Fund, No. 15-1439*

Decided March 20, 2018

Today, the Supreme Court held 9-0 that class actions alleging only federal claims under the Securities Act of 1933 may be heard in state court and, if brought in state court, cannot be removed to federal court.

### Background:

Federal and state courts have traditionally shared jurisdiction over claims under the Securities Act of 1933. After the Private Securities Litigation Reform Act of 1995 (PSLRA) tightened standards for pleading and proving federal securities fraud class actions, plaintiffs began filing those claims in state court. In response, Congress enacted the Securities Litigation Uniform Standards Act of 1998 (SLUSA), which requires certain “covered class actions” alleging state law securities claims to be heard and dismissed in federal court. 15 U.S.C. § 77p(c). But courts were split over whether covered class actions filed in state court that allege *only* claims under the 1933 Act also must be heard in federal court. In this case, investors in Cyan, Inc. filed a class action in California state court alleging only claims under the 1933 Act. The California courts refused to dismiss the case for lack of subject-matter jurisdiction.

### Issues:

- (1) Whether state courts lack subject-matter jurisdiction over class actions that allege only Securities Act of 1933 claims, and
- (2) Whether defendants in class actions filed in state court that allege only 1933 Act claims may remove the cases to federal court.

*"[W]e will not revise [Congress's] legislative choice, by reading a conforming amendment and a definition in a most improbable way, in an effort to make the world of securities litigation more consistent or pure."*

Justice Kagan,  
writing for the Court

Gibson Dunn Named  
**Appellate Firm of the Year**



## Court's Holding:

SLUSA does not deprive state courts of subject-matter jurisdiction over class actions raising only claims under the 1933 Act and does not authorize defendants to remove such actions to federal court.

## What It Means:

- SLUSA has often been the subject of statutory-interpretation disputes. But here, the unanimous Court held that SLUSA's "clear statutory language" does not preclude state courts from adjudicating class actions involving 1933 Act claims. SLUSA's class-action bar and federal-court-channeling provision apply only to state law claims.
- Under SLUSA, covered securities class actions based on the 1934 Act must proceed in federal court. 15 U.S.C. § 78aa. But as a result of the Court's decision today, covered class actions based only on the 1933 Act may proceed in state court. Either way, the Court emphasized, the substantive protections of the PSLRA (such as the safe harbor for forward-looking statements) apply to all claims under both the 1933 and 1934 Acts.
- The United States argued that SLUSA permits defendants in class actions filed in state court that raise 1933 Act claims to remove those actions to federal court. The Court disagreed.
- In the wake of this ruling, businesses should expect to see more securities class actions alleging violations of the 1933 Act in state court, because plaintiffs will seek to take advantage of state courts that are perceived to be friendlier to their interests. This significant loophole may prompt Congress to enact new legislation, similar to SLUSA, to ensure that plaintiffs are required to bring securities class actions in federal court.

---

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

### Appellate and Constitutional Law Practice

Caitlin J. Halligan  
+1 212.351.3909  
challigan@gibsondunn.com

Mark A. Perry  
+1 202.887.3667  
mperry@gibsondunn.com

Nicole A. Saharsky  
+1 202.887.3669  
nsaharsky@gibsondunn.com

---

### Related Practice: Securities Litigation

Brian M. Lutz  
+1 415.393.8379  
blutz@gibsondunn.com

Robert F. Serio  
+1 212.351.3917  
rserio@gibsondunn.com

Meryl L. Young  
+1 949.451.4229  
myoung@gibsondunn.com

## Related Practice: Class Actions

Theodore J. Boutrous, Jr.  
+1 213.229.7804  
tboutrous@gibsondunn.com

Christopher Chorba  
+1 213.229.7396  
cchorba@gibsondunn.com

Theane Evangelis  
+1 213.229.7726  
tevangelis@gibsondunn.com

© 2018 Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, CA 90071

Attorney Advertising: The enclosed materials have been prepared for general informational purposes only and are not intended as legal advice.

If you would like NOT to receive future e-mail alerts from the firm, please reply to this email with the word "UNSUBSCRIBE" in the subject line. Thank you.

Please visit our website at [www.gibsondunn.com](http://www.gibsondunn.com). | Legal Notice, Please Read.

